



OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable F. L. Massie
County Auditor
Wilbarger County
Vernon, Texas

Dear Sir:

Opinion No. 0-3471

Re: What relationship exists between Mr. Byers, a city commissioner of Vernon, and Mr. Skinner under the following facts:
Mr. Byers' wife is the half sister of Mrs. Skinner's father. Does such relationship, if any, prohibit the City of Vernon from employing Mr. Skinner in any capacity?

We have your letter of April 28, 1941, setting forth the following facts:

"Mr. C. M. Ladd of this City, bona fide citizen, and holds no Public Office of any kind.

"Mr. Byers, also a resident citizen of Vernon, Texas, is on the City Commission of the City of Vernon, and married a half sister of Mr. Ladd.

"Mr. A. D. Skinner, also a resident citizen of Vernon, Texas, married the daughter of Mr. Ladd."

Under the above facts, quoted in full from your letter, you request our opinion upon the following question:

"What is the relationship of Mr. Byers and Mr. Skinner, either by affinity or consanguinity, and would the relationship, if any, prohibit the City of Vernon, Texas, from employing Mr. Skinner in any capacity?"

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Article 432, of the Penal Code, provides as follows:

"No officer of this State or any officer of any district, county, city, precinct, school district, or other municipal subdivision of this State, or any officer or member of any State, district, county, city, school district or other municipal board, or judge of any court, created by or under authority of any general or special law of this State, or any member of the Legislature, shall appoint, or vote for, or confirm, the appointment to any office, position clerkship, employment or duty, of any person related within the second degree by affinity or within the third degree of consanguinity to the person so appointing or so voting, or to any other member of any such board, the Legislature, or court of which such person so appointing or voting may be a member, when the salary, fees, or compensation of such appointee is to be paid for, directly or indirectly, out of or from public funds or fees of office of any kind or character whatsoever."

It is apparent from the foregoing article that the City of Vernon could not employ any one related to a Member of the City Commission within the second degree by affinity or within the third degree by consanguinity.

Collateral consanguinity is the relationship existing between persons who descend from the same common ancestor but not from each other. Lineal consanguinity is the relationship existing between persons when one is descended from the other. In computing the degrees of lineal consanguinity existing between two persons every generation in the direct course of relationship makes a degree. The method of computing collateral consanguinity is to discover the common ancestor, to begin with him and reckon downward and the degrees the two persons, or the more remote of them is distant from the ancestor is the degree of kindred subsisting between them. Thus, brothers are related to each other in the first degree because from the father each one of them is one degree. An uncle and nephew are related to each other in the second degree because the nephew is two degrees distant from the common ancestor and the uncle is extended to the remotest degree of collateral relationship. Tyler Tap R. R. Company and Douglass v. Overton, 1 Tex. Ct. App., page 268.

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Degrees of affinity are computed in the same manner as those of consanguinity, thus relatives of the wife stand at the same degree of affinity to the husband as they are related to the wife by consanguinity. *Kelly v. Neely*, 12 Ark. 657, 56 Am. Dec. 288; 2 C. J. 379; 2 C. J. Secundum 992.

The Court of Criminal Appeals of Texas cites the case of *Kelly v. Neely*, supra, with approval in its opinion in the case of *Stringfellow v. State*, 61 S. W. 719, in which it held in effect that by marriage the man places himself in the same degree of propinquity to all the relatives of his wife either by affinity or consanguinity as she actually stands toward them.

This is not the rule in the majority of jurisdictions and is not the rule in Texas in civil cases. See *Schultze v. McLeary*, 11 S. W. 924, and *Seabrook, et al v. First National Bank of Port Lavaca*, 171 S. W. 247. However, Article 432, Penal Code, is a criminal statute and we are constrained to adopt the construction placed upon it by our Court of Criminal Appeals.

This department in its Opinion No. 0-2225, a copy of which is attached hereto, has adopted the construction of the Court of Criminal Appeals in the *Stringfellow* case, supra, and has overruled previous opinions following the rule prevailing in civil cases and in the majority of other jurisdictions.

Under the criterion set forth above, we find that the common ancestor of Mr. Byers' wife and Mr. Skinner's wife was either the father or mother of Mrs. Byers. It is immaterial that Mrs. Byers is only the half sister of Mrs. Skinner's father. Further, under the rule, one common ancestor is sufficient. See our Opinion No. 0-791 attached hereto. Coming downward, we find that two degrees separate the ancestor of Mrs. Byers from Mrs. Skinner, hence, Mrs. Byers' is extended to the degree of relationship being most remote from the common ancestor, and is related to Mrs. Skinner in the second degree. Mr. Byers and Mr. Skinner, under the rule, are in the same propinquity to each other by affinity as their wives are by consanguinity and are hence related in the second degree. Being related in the second degree by affinity, the provi-


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sions of Article 432, Penal Code, would prohibit the City of Vernon from employing Mr. Skinner as long as Mr. Byers is on the City Commission.

Yours very truly

APPROVED JUL 13, 1941

ATTORNEY GENERAL OF TEXAS


FIRST ASSISTANT
ATTORNEY GENERAL

By 

E. R. Simmons
Assistant

TRG:EP

ENCLOSURES

